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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

DAVID ERNESTO MARTINEZ,

Defendant and Appellant.

B194014

(Los Angeles County
Super. Ct. No. PA053535)

APPEAL from an order of the Superior Court of Los Angeles County. Ronald S. Coen, Judge. Affirmed.

Athena Shudde, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Appellant David Ernesto Martinez pled guilty to one count of selling a controlled substance (Health & Saf. Code, § 11352, subd. (a)). He was placed on three years of formal probation, with 180 days in jail. He subsequently moved to withdraw the plea, maintaining that there was a violation of Penal Code section 1016.5, subdivision (a) (§ 1016.5(a)), because he had not been advised of the plea's effect on his Temporary Protected Status (TPS). The motion was denied. He appealed. His appointed counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*), raising no issues. He was notified that he could file his own brief. He has not done so.

Section 1016.5(a) requires the following advisement, before a guilty plea is accepted: "If you are not a citizen, you are hereby advised that conviction of the offense for which you have been charged may have the consequences of deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States."

At the plea proceedings, the trial court advised appellant: "If you are not a citizen of the United States, this plea can and will be used to deport you, to deny you benefits of citizenship and to deny you reentry into this country."

The motion to withdraw the plea was "made on the ground that the court failed to advise the defendant of an adverse immigration consequence attendant to the entry of plea, as mandated by Penal Code §1016.5(a). [*sic*] . . . Had he known that his plea of guilty would result in the loss of his TPS legal status and his permanent exclusion, the defendant would have foregone entry of plea and instead exercised his right to a jury trial."

In denying the motion, the trial court cited this court's decision in *People v. Gutierrez* (2003) 106 Cal.App.4th 169. Under *Gutierrez*, use of the term "denied reentry" constitutes substantial compliance with the statutory requirement of an advisement on "exclusion from admission to the United States." (*Id.* at pp. 173-174.)

After review of the entire record on appeal, we are satisfied that appellant's attorney has fully complied with her responsibilities, and no arguable issues exist. (*Smith*

v. Robbins (2000) 528 U.S. 259; *Wende, supra*, 25 Cal.3d at p. 441; *People v. Kelly* (2006) 40 Cal.4th 106, 123-124.)

DISPOSITION

The judgment is affirmed.

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FLIER, J.

We concur:

COOPER, P.J.

RUBIN, J.